

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**THOMAS W. CUNNINGHAM,**

**Plaintiff,**

**v.**

**No. CV 12-1052 MV/LAM**

**THE CITY OF ALBUQUERQUE, et al.,**

**Defendants.**

**ORDER DENYING WITHOUT PREJUDICE MOTION REQUESTING REFERRAL  
TO DEPARTMENT OF JUSTICE**

**THIS MATTER** is before the Court on Plaintiff's *Motion Requesting a Referral to the United State[s] Department of Justice to Conduct the Investigation in This Case (Doc. 14)*, filed December 31, 2012. Defendants filed a response to the motion on January 9, 2013. [*Doc. 15*]. Having reviewed the motion, response, record of this case, and relevant law, the Court **FINDS** that the motion is not well-taken and should be **DENIED without prejudice**.

In his motion, Plaintiff asks the Court to refer this case to the Department of Justice to investigate Plaintiff's allegations of excessive force. [*Doc. 14* at 1]. Plaintiff also asks the Court to allow him to take a polygraph test to support his allegations. *Id.* at 3. Defendants contend, *inter alia*, that Plaintiff's motion should be denied if Plaintiff is seeking the appointment of the Department of Justice as Plaintiff's counsel in this case, because Plaintiff has not established a proper basis for the appointment of counsel. *Id.* at 2-3. Defendants further oppose Plaintiff's request for a polygraph examination because Plaintiff does not explain why he needs the court's permission to take such an examination, or why the Department of Justice should administer it. *Id.* at 3.

The Court finds that Plaintiff's motion is without merit. Plaintiff fails to provide any support for his request for a "referral" to the Department of Justice. The Court has ordered Defendants to prepare a *Martinez* report in this case, pursuant to which Defendants will conduct an investigation into the incident or incidents underlying Plaintiff's allegations. *See [Doc. 21]*. Therefore, Plaintiff's request for a referral to the Department of Justice to conduct an investigation is unnecessary at this time. Plaintiff also fails to explain why a polygraph examination is necessary at this point in the case, or why the Court would be involved in allowing such an examination. To the extent Plaintiff is seeking appointment of counsel, the Court has already denied Plaintiff's request for counsel (*see Doc. 13*), and finds no reason to reconsider its decision at this time. For these reasons, the Court will deny Plaintiff's motion without prejudice.

**IT IS THEREFORE ORDERED** that Plaintiff's *Motion Requesting a Referral to the United State[s] Department of Justice to Conduct the Investigation in This Case (Doc. 14)* is **DENIED** without prejudice.

**IT IS SO ORDERED.**

  
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**THE HONORABLE LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**